

# Court of Appeals, State of Michigan

## ORDER

People of MI v Amber Marie Mercer

Docket No. 352659


LC No. 18-000272-AR

Patrick M. Meter  
Presiding Judge

Amy Ronayne Krause

Michael F. Gadola  
Judges

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

  
Presiding Judge

Ronayne Krause, J., would grant leave to appeal and states: As the Circuit Court properly found, a complainant's history of violent conduct toward a defendant is relevant to a claim of self-defense. *People v Taylor*, 195 Mich App 57, 61; 489 NW2d 99 (1992). However, the Circuit Court erred in relying on an outdated test for finding an abuse of discretion. Cf, *People v Babcock*, 469 Mich 247, 269-270; 666 NW2d 231 (2003); and *People v Rockwell*, 188 Mich App 405, 410; 470 NW2d 673 (1991). Other-acts evidence may be admitted for the purpose of establishing a defendant's state of mind and whether a defendant honestly and reasonably believed it was necessary to use force. *People v VanderVliet*, 444 Mich 52, 82-83; 508 NW2d 114 (1993) ; *People v Denson*, 500 Mich 385, 399; 902 NW2d 306 (2017); *People v Dixon-Bey*, 321 Mich App 490, 518-519; 909 NW2d 458 (2017). Unlike *Denison*, which involved the defendant's own prior conduct in an unrelated and distinguishable incident, *Denison*, 500 Mich at 406-408, a defendant's prior dealings with a complainant is obviously relevant to the defendant's honest and reasonable expectations for future dealings with that complainant. The trial court's exclusion of all evidence of the complainant's past abuse of defendant totally deprived defendant of being able to present a meaningful self-defense argument, so it is improper to rely on whether defendant actually presented a self-defense argument to the jury. As the prosecutor aptly notes, defense counsel was placed in an essentially impossible position. Under the circumstances, I conclude that the trial court's total exclusion of the evidence of defendant's past conduct was outside the range of principled outcomes, *Babcock*, 469 Mich at 269-270, and on this record it is not possible to find that error harmless.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 16, 2020  
Date

  
Chief Clerk